

**NOV 15 2005****CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT****UNITED STATES OF AMERICA,****Plaintiff - Appellee,****v.****NEPONUCENO PRIETO-TORRES,****Defendant - Appellant.****No. 04-10534****D.C. No. CR-03-01013-JAT****MEMORANDUM\***

**Appeal from the United States District Court  
for the District of Arizona  
James A. Teilborg, District Judge, Presiding**

**Submitted November 8, 2005\*\***

**Before: WALLACE, LEAVY, and BERZON, Circuit Judges.**

Neponuceno Prieto-Torres appeals the sentence imposed following his guilty plea to one count of conspiracy to possess with intent to distribute methamphetamine in violation of 21 U.S.C. §§ 846 and 841(a)(1). Prieto-Torres,

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

who was sentenced under the mandatory Sentencing Guidelines before the Supreme Court its issued its decision in *United States v. Booker*, 125 S. Ct. 738 (2005), asserts that the case should be remanded for resentencing under the post-*Booker* advisory Guidelines.

We dismiss the appeal because Prieto-Torres, in his plea agreement, knowingly and voluntarily waived his right to appeal. *See United States v. Cortez-Arias*, 403 F.3d 1111, *as amended*, 425 F.3d 547 (9th Cir. 2005) (holding that pre-*Booker* waiver of right to appeal precludes appellate relief under *Booker*).

**DISMISSED.**